

Rel: 01/15/2010

Notice: This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2009-2010

2080693

M.H. and D.H.

v.

Jer. W. and Jes. W.

Appeal from Limestone Juvenile Court
(JU-07-322.01)

THOMPSON, Presiding Judge.

M.H. and D.H. ("the maternal grandparents") appeal from the judgment modifying custody of T.W. ("the child"). In the modification judgment, the Limestone Juvenile Court found the child to be dependent while in the custody of the maternal

2080693

grandparents, and the maternal grandparents' custody was terminated.

The initial issue for this court to consider is the timeliness of the maternal grandparents' appeal; therefore, we must set forth the procedural history of this case. Jer. W. ("the father") and Jes. W. ("the mother") (hereinafter collectively referred to as "the parents") married, and the child was born in June 2002. The parents agreed to give the maternal grandparents temporary custody of the child while the mother was in therapy for anger-management issues and the father was being treated for substance abuse. Pursuant to that agreement, the Lauderdale Juvenile Court entered a judgment in October 2003 awarding the maternal grandparents custody of the child.¹ After the entry of that judgment, the mother lived with the maternal grandparents and the child. The mother claims that she was the child's primary caregiver even after the entry of the 2003 judgment.

In June 2007, the parents filed a petition in Lauderdale County seeking custody of the child. The cause was

¹The Lauderdale Juvenile Court's judgment of October 2003 does not appear in the record on appeal.

2080693

transferred from Lauderdale County to Limestone County, where the parties had moved after the entry of the initial 2003 judgment. After a number of continuances, the Limestone Juvenile Court ("the juvenile court") held a hearing on the parents' request for a modification of custody on March 9, 2009. At the close of the hearing, the juvenile court announced from the bench that it found that it was not yet appropriate to return custody of the child to the parents. However, the juvenile court said, it also found that the child was dependent even while in the custody of the maternal grandparents and, therefore, that the maternal grandparents' custody of the child was terminated.

On March 27, 2009, the juvenile court entered a written judgment repeating the findings it had made at the close of the hearing, stating that the child was dependent and finding that it "was clear that the [maternal grandparents] crossed a line of wanting to keep the minor child at all costs and that they [were] not willing to work with the parents through the reunification process."

The juvenile court vested temporary custody of the child with the Limestone County Department of Human Resources

2080693

("DHR"), with instructions to DHR to place the child "with any party it deems appropriate." In the judgment, the juvenile court set a dispositional hearing for April 24, 2009.

On March 23, 2009, before the entry of the March 27 written judgment, the maternal grandparents filed a motion pursuant to Rule 59, Ala. R. Civ. P., to alter, amend, or vacate the "judgment," arguing, among other things, that the March 9 hearing was a dependency hearing and not a trial on the merits to determine who should have custody of the child. The juvenile court denied the Rule 59 motion on March 24, 2009.

On April 15, 2009, with new counsel, the maternal grandparents filed a motion requesting the transcript of the March 9 hearing. The juvenile court set the motion for hearing on April 24, 2009, the same day the dispositional hearing was scheduled to occur. On April 17, the maternal grandparents moved to continue the dispositional hearing. The juvenile court denied their motion on the ground that the March 27, 2009, judgment was a final judgment removing custody of the child from the maternal grandparents and that the time for filing an appeal of that judgment had passed. Therefore,

2080693

the juvenile court ruled, the maternal grandparents no longer had standing in the action.

The record indicates that the maternal grandparents did not move to intervene at that point. The dispositional hearing was held as scheduled on April 24, 2009, after which custody of the child was awarded to the child's paternal grandparents. The maternal grandparents filed their notice of appeal on April 29, 2009, 33 days after the juvenile court had entered its March 27, 2009, written judgment removing custody from the maternal grandparents.

Before considering the appeal on the merits, this court instructed the parties to file letter briefs regarding the timeliness of the maternal grandparents' appeal. The maternal grandparents contend that there was no final judgment from which to appeal in this case until, they say, the juvenile court entered a judgment upon completion of the dispositional hearing. Settled law is to the contrary, however.

"Although a juvenile court's orders in a dependency case are, in one sense, never 'final' because the court retains jurisdiction to modify its orders upon a showing of changed circumstances, see C.L. v. D.H., 916 So. 2d 622 (Ala. Civ. App. 2005); Committee Comments, Rule 4, Ala. R.App. P., this court has always treated formal dependency adjudications as final and appealable judgments

despite the fact that they are scheduled for further review by the juvenile court.

"'Under our caselaw, a formal determination by a juvenile court of a child's dependency coupled with an award of custody incident to that determination will give rise to an appealable final judgment even if the custody award is denominated as a "temporary" award and further review of the case is envisioned. See Potter v. State Dep't of Human Res., 511 So. 2d 190, 192 (Ala. Civ. App. 1986); see also C.L. v. D.H., 916 So. 2d 622, 625-26 (Ala. Civ. App. 2005).'

"J.J. v. J.H.W., [Ms. 2061197, October 10, 2008] ___ So. 3d ___, ___ (Ala. Civ. App. 2008)."

D.P. v. Limestone County Dep't of Human Res., [Ms. 2080544, July 2, 2009] ___ So. 3d ___, ___ (Ala. Civ. App. 2009).

Based on the cited authority, we conclude that the juvenile court's March 27, 2009, judgment finding the child dependent and removing the child from the maternal grandparents' custody was an appealable final judgment. In juvenile actions, an appeal must be initiated within 14 days of the entry of the judgment or order from which the appeal is taken. Rule 28(C), Ala. R. Juv. P. The timely filing of a notice of appeal is jurisdictional. T.P. v. T.J.H., 10 So. 3d 613, 614 (Ala. Civ. App. 2008) (citing Holmes v. Powell, 363 So. 2d 760, 762 (Ala. 1978); and M.M. v. L.L., 989 So. 2d 528,

2080693

530 (Ala. Civ. App. 2007)). The maternal grandparents did not file their notice of appeal until April 29, 2009, 33 days after entry of the final judgment. Therefore, their appeal was untimely filed, and we lack jurisdiction to consider this appeal. The appeal is, therefore, dismissed.

APPEAL DISMISSED.

Pittman, Bryan, Thomas, and Moore, JJ., concur.